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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD HERNANDEZ,

Defendant and Appellant.

B207076

(Los Angeles County  
Super. Ct. No. TA089764)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Kelvin D. Filer, Judge. Affirmed.

Julie Schumer, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Stephanie  
A. Miyoshi and David A Wildman, Deputy Attorneys General, for Plaintiff and  
Respondent.

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Richard Hernandez appeals from the judgment entered following his conviction by jury of attempted willful, deliberate and premeditated murder (Pen. Code, §§ 187, 664)<sup>1</sup> with a finding he personally used and discharged a firearm in committing the offense (§ 12022.53, subds. (b), (c) & (e)(1)). The jury was unable to agree on the criminal street gang enhancement allegation (§ 186.22, subd. (b)(1)(C)), and it was dismissed. Hernandez was sentenced to an indeterminate life term and a determinate 20-year term for the firearm-use enhancement and ordered to register as a gang member under section 186.30. On appeal, Hernandez contends he was improperly made subject to the gang registration requirement in the absence of a factual finding his attempted murder offense was “gang related;” the evidence was insufficient to support such a finding; and his defense counsel rendered constitutionally ineffective assistance by failing to object to the imposition of the gang registration requirement. We affirm.

### **SUMMARY OF TRIAL EVIDENCE**

The People’s evidence established that on the afternoon of February 11, 2007, Michael Carthan and three friends were outside his house in Compton. Hernandez and his companion, “Jaimito,” pulled up in a van, stepped out and started “gang-banging” or demanding to know where Carthan’s friends were from and why they were in the neighborhood. Hernandez and Jaimito began throwing glass bottles and ordering Carthan’s friends to leave, saying, “This is Largo.” When his friends stood their ground, Carthan intervened, fearing a fight would ensue. Hernandez and Jaimito drove away, but Hernandez threatened to come back in five minutes.

Hernandez returned alone minutes later. Carthan was outside cleaning up the broken glass after taking his friends inside his house. Hernandez approached without speaking, pointed a gun and fired numerous shots at Carthan, hitting him once in the leg. Carthan fled behind his house.

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1 Statutory references are to the Penal Code.

Los Angeles County Sheriff's Detective Gerald Groenow testified as a gang expert and the investigating officer in this case. Groenow had been assigned to the Operation Safe Streets Bureau, a gang enforcement unit, for the past two years where his primary duties as a detective were to gather gang intelligence, document gang members and investigate gang-related crimes in the area of the Century Station. Groenow was familiar with the Compton Varrio Largo 36 Gang (Largo Gang), from both his direct contacts with individual members and monitoring of the gang's activities. Groenow estimated there were 120 members of the Largo Gang, and it claimed to control the area within which Carthan's house was located. Carthan was not a gang member.

Following Hernandez's arrest, Detective Groenow interviewed him. Prior to the interview, Groenow advised Hernandez of his right to remain silent, to the presence of an attorney and, if indigent, to appointed counsel (*Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694]), which Hernandez waived orally and in writing. In the interview, Hernandez admitted shooting Carthan, but insisted he was just trying to scare him. He also told Groenow that he did not know at the time whether Carthan and his friends were "gangsters," although he saw tattoos on their necks. Hernandez later learned they were not gangsters. He also admitted having a Largo Gang tattoo on his chest.

Detective Groenow also interviewed DeJuan Nelson, one of Carthan's friends, who told him that during the confrontation, Hernandez and Jaimito claimed to be Largo Gang members. Nelson added that he knew Jaimito belonged to the Largo Gang.

In Detective Groenow's opinion, Hernandez was a Largo Gang member, based on the Largo Gang tattoo on his chest, his prior admissions of active gang membership, and his claim of membership in the Largo Gang in confronting Carthan and his friends. Groenow explained that several colleagues, who knew Hernandez, stated he had repeatedly admitted being a Largo Gang member on separate occasions. Additionally, Groenow noted that Hernandez was in the presence of Jaimito, an admitted Largo Gang member.

Detective Groenow testified the general philosophy of the Largo Gang, and other gangs he monitored, was to establish dominance in the community. By possessing and using guns, gang members instilled fear in the community, so that local residents are reluctant to report gang-related crimes and gang members are thereby free to commit crimes to benefit the gang. Such crimes include robbery, carjacking, possession and use of handguns, attempted murder, and murder. Groenow reviewed for the jury documents memorializing the criminal convictions of admitted Largo Gang members. The first related to the felony conviction of Carlos Eric Armenta for carrying a concealed weapon in March 2006. The second concerned the April 2006 convictions of Johnny Santos Garcia for robbery, attempted murder, and kidnapping for extortion.

Detective Groenow opined that a gang-member shooting described in a hypothetical question based on the facts of this case was committed for the benefit of the gang. Groenow stated what occurred during the confrontation would have been viewed by the gang member as a lack of respect both for himself and his gang, particularly if the individuals confronted were thought to have been rival gang members. Groenow explained the gang member would have felt compelled to return with and to use a gun to protect his own and his gang's reputation within the community, and to reassert the gang's control of claimed territory.

Hernandez did not call any witnesses or present any evidence in his defense other than through cross-examination of the People's witnesses.

## **DISCUSSION**

### *1. Lack of a Factual Finding to Support the Gang Registration Requirement*

Hernandez is correct that without a specific factual finding his crime of attempted murder was "gang related" under section 186.30, he was ordered to register as a gang offender upon his release from custody. It is also true that defense counsel failed to object to the lack of a factual finding or to challenge the imposition of the gang registration requirement at sentencing. However, we will imply the necessary finding as

long as it is supported by substantial evidence.<sup>2</sup> (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1147.) Additionally, our conclusion that imposition of the gang registration requirement is supported by substantial evidence in this case offsets Hernandez’s claim of ineffective assistance of counsel.

## 2. *Sufficient Evidence Supports Imposing the Gang Registration Requirement*

“When an appellant asserts there is insufficient evidence to support the judgment, our review is circumscribed. [Citation.] We review the whole record most favorably to the judgment to determine whether there is substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could have made the requisite finding under the governing standard of proof.” (*In re Jorge G.* (2004) 117 Cal.App.4th 931, 941-942 [gang registration requirement]; see generally *People v. Kraft* (2000) 23 Cal.4th 978, 1053-1054.)

The purpose of a gang registration requirement is to help law enforcement authorities “monitor the location of those associating with gangs” in order to promote “the goal of protecting the public from gang-related violent crime.” (*People v. Bailey* (2002) 101 Cal.App.4th 238, 244.) The gang registration requirement is statutorily limited to those convicted of certain offenses enumerated in section 186.22 or to an offense “the court finds is gang related at the time of sentencing or disposition.” (§ 186.30, subd. (b)(3).) The term “gang related” includes, but is not limited to, “all crimes committed for the benefit of, at the direction of, or in association with a criminal street gang.” (*In re Jorge G., supra*, 117 Cal.App.4th at p. 941.) The fact that a crime qualifies as “gang related” must be proved by a preponderance of the evidence. (*Id.* at p. 944.)

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<sup>2</sup> Section 186.30 does not by its terms require an express finding on the record to justify imposing the registration requirement, and where the record is silent we may presume or infer that “the trial court had a proper basis for a particular finding or order. [Citation].” (*People v. Stowell* (2003) 31 Cal.4th 1107, 1114-1115.)

“A crime is gang related if it is related to a criminal street gang as defined in section 186.22, subdivisions (e) and (f). The elements of this definition require: (1) an ongoing organization or group, (2) of three or more persons, (3) having as one of its primary activities the commission of the crimes enumerated in section 186.22, subdivision (e)(1)-(25), (4) having a common name or symbol, and (5) whose members individually or collectively have engaged in a pattern of criminal gang activity. This pattern of gang activity must consist of: (a) two or more of the offenses enumerated in section 186.22, subdivision (e)(1)-(25), provided that at least one offense occurred after the effective date of the statute; (b) the last offense occurred within three years of the one before it; and (c) the offenses were committed on separate occasions or by two or more persons.” (*In re Jorge G.*, *supra*, 117 Cal.App.4th at p. 944.)

Citing *People v. Martinez* (2004) 116 Cal.App.4th 753, 762 (*Martinez*), Hernandez asserts the only evidence upon which the court could have based the gang registration requirement was his and Jamito’s personal affiliation with the Largo Gang, which he argues was insufficient to establish his crime of attempted murder was gang related under section 186.30.

In *Martinez*, the trial court imposed a gang registration requirement pursuant to section 186.30 when the defendant pleaded guilty to committing an automobile burglary and subsequently violated his probation by associating with a known gang member. (*Martinez*, *supra*, 116 Cal.App.4th at pp. 757-758.) The appellate court resolved that the imposition of a gang registration requirement is proper only where the underlying crime is proven to have been gang related, i.e., where the evidence supports a determination that it was committed, as defined in section 186.22, for the benefit of, at the direction of, or in association with any criminal street gang. (*Id.* at pp. 760-762.) That court struck the gang registration requirement, noting that “[a]uto burglary is a crime, but not one necessarily gang related, and the circumstances of the offense as described in the record before us fail to connect the offense with defendant’s gang activities.” (*Id.* at p. 762.) Even if the burglary had been committed with a known gang member, the record must demonstrate that the offense was directed by, associated with, or benefitted his criminal

street gang. (*Ibid.*) The appellate court concluded a defendant's personal affiliations and criminal record are relevant in determining whether a particular offense was gang related; however, in order to substantiate that a crime was committed for the benefit of, at the direction of, or in association with a criminal street gang, some evidentiary support, beyond the defendant's past record and associations must be adduced. (*Ibid.*) "The crime itself must have some connection with the activities of a gang . . . ." (*Id.* at p. 761.) The court also noted the lack of expert testimony explaining the relationship of the crime to a criminal street gang. (*Id.* at p. 762, fn. 8.)

The record before us contains no such evidentiary shortcomings; there is more than a mere recitation of Hernandez's history of Largo Gang membership. The attempted murder itself had evident connections to gang activities. Minutes before the shooting, Hernandez and his fellow Largo Gang member had demanded Carthan's friends leave Largo Gang territory. Met with the friends' resistance and Carthan's interference, Hernandez and Jaimito left, but not before Hernandez stated he would return shortly. In his police interview, Hernandez revealed he suspected at the time Carthan's friends were possibly members of another gang. According to expert witness testimony, this evidence established the attempted murder was committed to benefit the Largo Gang. By returning to shoot Carthan, Hernandez was responding as a gang member to what he perceived as slights to his gang's fearsome reputation and threats to its territorial integrity.

Although the jury did not find such evidence proved the gang allegation enhancement beyond a reasonable doubt, we agree with the trial court that it was certainly sufficient to prove the shooting was gang-related by a preponderance of the evidence, and thereby supported the imposition of the gang registration requirement under section 180.30. (*Martinez, supra*, 116 Cal.App.4th at p. 762 ["[A] crime committed by a defendant in association with other gang members or demonstrated to promote gang objectives may be gang related."].)

## **DISPOSITION**

The judgment is affirmed.

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**WOODS, J.**

**We concur:**

**PERLUSS, P. J.**

**ZELON, J.**